

## Federal Deposit Insurance Corporation

## § 352.1

supervisory activity or any portion thereof prepared by the FDIC. The bank also shall not make any representation concerning such report or the findings therein.

### § 350.10 Prohibited conduct and penalties.

(a) *Misrepresentations.* No officer, director, employee, agent, or other person participating in the affairs of a bank, shall, directly or indirectly:

(1) Disclose or cause to be disclosed false or misleading information in the annual disclosure statement, or omit or cause the omission of pertinent or required information in the annual disclosure statement; or

(2) Represent that the FDIC, or any employee thereof, has reviewed, or confirmed the accuracy or relevance of the disclosure statement.

(b) *Participating persons.* For purposes of this part, a person *participating in the affairs of a bank* shall include (but not be limited to) any person who provides information contained in, or directly or indirectly assists in the preparation of, the annual disclosure statement.

(c) *Enforcement actions.* Conduct that violates paragraph (a) of this section may constitute an unsafe or unsound banking practice or otherwise serve as a basis for an enforcement action by the FDIC.

### § 350.11 Safe harbor provision.

The provisions of § 350.10 shall not apply unless it is shown that the information disclosed was included without a reasonable basis or other than in good faith.

### § 350.12 Disclosure required by applicable banking or securities law or regulations.

The requirements of this part are not intended to replace or waive any disclosure required to be made under applicable banking or securities law or regulations.

[62 FR 10201, Mar. 6, 1997]

## PART 352—NONDISCRIMINATION ON THE BASIS OF DISABILITY

Sec.

352.1 Purpose.

352.2 Application.

352.3 Definitions.

352.4 Nondiscrimination in any program or activity conducted by the FDIC.

352.5 Accessibility to electronic and information technology.

352.6 Employment.

352.7 Accessibility of programs, and activities: Existing facilities.

352.8 Program accessibility: New construction and alterations.

352.9 Communications.

352.10 Compliance procedures.

352.11 Notice.

AUTHORITY: 12 U.S.C. 1819(a); 29 U.S.C. 794d.

SOURCE: 69 FR 26492, May 13, 2004, unless otherwise noted.

### § 352.1 Purpose.

(a) One purpose of this part is to implement the spirit of section 504 of the Rehabilitation Act of 1973 (the Rehabilitation Act) as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 and the Workforce Investment Act of 1998. Section 504 prohibits discrimination on the basis of disability in programs and activities conducted by a federal executive agency. Although the FDIC does not believe that Congress contemplated coverage of non-appropriated, independent regulatory agencies such as the FDIC, the FDIC has chosen to promulgate this final regulation to ensure that, to the extent practicable, persons with disabilities are provided with equal access to FDIC programs and activities.

(b) This part is also intended to implement section 508 of the Rehabilitation Act as amended. Section 508 requires each federal agency or department to ensure that the electronic and information technology they procure allows individuals with disabilities access to that technology comparable to the access of those who are not disabled, unless the agency would incur an undue burden.

## PART 351 [RESERVED]

**§ 352.2 Application.**

(a) This part applies to all programs, activities, and electronic and information technology developed, procured, maintained, used or conducted by the FDIC. The following programs and activities involve the direct provision of benefits and services to, or participation by, members of the public:

(1) Attending Board of Directors meetings open to the public and all other public meetings;

(2) Making inquiries or filing complaints at the FDIC Office of Legislative Affairs and Office of Public Affairs;

(3) Using the FDIC library in Washington, DC;

(4) Using the FDIC Web site on the Internet;

(5) Visiting an insured bank at which they conducted business (or an alternative liquidation site selected by the FDIC) and which has become insolvent, or been purchased by another bank under FDIC supervision, for the purpose of:

(i) Collecting FDIC checks for the insured amount of their deposits previously held in such bank; and/or

(ii) Discussing with FDIC representatives matters related to the repayment of debts which they previously owed to such bank, prior to its failure or purchase by another bank under FDIC supervision;

(6) Seeking employment with the FDIC;

(b) This regulation governs the conduct of FDIC personnel in their interaction with employees of insured banks and employees of other state or federal agencies while discharging the FDIC's statutory obligations as insurer and/or receiver of financial institutions. It does not apply to financial institutions insured by the FDIC.

(c) Although application for employment and employment with the FDIC are programs and activities of the FDIC for purposes of this regulation, they shall be governed only by the standards set forth in § 352.6 of this part.

**§ 352.3 Definitions.**

For purposes of this part, the term—  
(a) “Auxiliary aids” means services or devices that enable persons with im-

paired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities, and Electronic and Information Technology set forth in § 352.2.

(b) “Electronic and Information Technology” (“EIT”) has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide web sites, multimedia, and office equipment (such as copiers and fax machines).

(c) “Facility” means all or any portion of buildings, structures, equipment, roads, walks, parking lots and other real or personal property. As used in this definition, “personal property” means only furniture, carpeting and similar features not considered to be real property.

(d) “Individual with a disability” means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(e) “Qualified individual with a disability” means—

(1) With respect to any FDIC program or activity in which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and can achieve the purpose of the program or activity without modifications in the program or activity that the FDIC can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity;

(3) With respect to employment, an individual with a disability as defined in 29 CFR 1630.2(g), which is made applicable to this part by § 352.6.

## Federal Deposit Insurance Corporation

## § 352.9

(f) “Sections 504 and 508” mean sections 504 and 508 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794 and 794d)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617), the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955), and the Workforce Investment Act of 1998 (Pub. L. 105-220, 112 Stat. 936). As used in this regulation, sections 504 and 508 shall be applied only to the programs, activities, and EIT conducted by the FDIC as set forth in §§352.2 and 352.3(b) of this regulation.

### **§ 352.4 Nondiscrimination in any program or activity conducted by the FDIC.**

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program or activity conducted by the FDIC.

### **§ 352.5 Accessibility to electronic and information technology.**

(a) In accordance with section 508 of the Rehabilitation Act, the FDIC shall ensure, absent an undue burden, that the electronic and information technology the agency develops, procures, maintains or allows:

(1) Individuals with disabilities who are FDIC employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by FDIC employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the FDIC to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When development or procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance

Board, 36 CFR 1194, would pose an undue burden, the FDIC shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

### **§ 352.6 Employment.**

No qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment in any program or activity conducted by the FDIC. The definitions, requirements, and procedures (including those pertaining to employment discrimination complaints) of sections 501 of the Rehabilitation Act of 1973, as established in 29 CFR parts 1614 and 1630, shall apply to employment in the FDIC.

### **§ 352.7 Accessibility of programs and activities: Existing facilities.**

The FDIC shall operate each of the programs or activities set forth in §352.2 of this part so that when viewed in its entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

### **§ 352.8 Program accessibility: New construction and alterations.**

Each building or part of a building, whether newly constructed, or substantially altered, in which FDIC programs or activities will be conducted, shall be designed, constructed or altered so as to be readily accessible to, and usable by, individuals with disabilities.

### **§ 352.9 Communications.**

(a) The FDIC shall take appropriate steps to ensure effective communication with participants in FDIC programs, activities and EIT.

(1) The FDIC shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the FDIC programs or activities.

(i) In determining what type of auxiliary aid is necessary, the FDIC shall give primary consideration to any reasonable requests of the individual with a disability.

(ii) The FDIC need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the FDIC communicates by telephone, it shall use telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems with hearing impaired participants and beneficiaries.

(b) The FDIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, facilities and EIT. Interested persons may obtain such information by calling, writing or visiting the FDIC Office of Diversity and Economic Opportunity (ODEO), located at 801 17th Street, NW., Washington, DC 20434. The ODEO telephone number is (202) 416-4000 and (202) 416-2487 (TDD).

(c) The FDIC shall provide information at a primary entrance to each of its facilities where programs or activities are conducted, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

#### § 352.10 Compliance procedures.

(a) *Applicability.* Paragraph (b) of this section applies to employment complaints. The remaining sections concern complaints alleging disability discrimination in FDIC programs or activities and denial of technology access.

(b) *Employment complaints.* The FDIC shall process complaints alleging employment discrimination on the basis of disability according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR parts 1614 and 1630 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Informal process.* A complainant shall first exhaust informal administrative procedures before filing a formal complaint alleging disability discrimination in FDIC programs or activities, or a denial of technology access. The FDIC's Office of Diversity and Economic Opportunity shall be re-

sponsible for coordinating implementation of this section. An aggrieved individual initiates the process by filing an informal complaint with ODEO within 180 calendar days from the date of the alleged disability discrimination or denial of access to electronic information technology. An informal complaint with respect to any FDIC program or activity must include a written statement containing the individual's name and address which describes the FDIC's action in sufficient detail to inform the FDIC of the nature and date of the alleged violation of these regulations. An informal complaint for denial of technology access must clearly identify the individual and the manner in which the EIT was inaccessible. All informal complaints shall be signed by the complainant or one authorized to do so on his or her behalf. Informal complaints filed on behalf of third parties shall describe or identify (by name if possible) the alleged victim of discrimination or denial of technology access. During the informal resolution process, ODEO has 30 days to attempt a resolution of the matter. If the aggrieved individual elects to participate in mediation, the period for attempting informal resolution will be extended for an additional 60 calendar days. If the matter is not resolved informally, the individual will be provided written notice of the right to file a formal complaint. All complaints should be sent to the FDIC's Office of Diversity and Economic Opportunity, 801 17th Street, NW., Washington, DC 20434.

(d) If the FDIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complainant to the appropriate government entity.

(e) *Formal complaints.* The individual must file a written formal complaint within 15 calendar days after receiving the notice of a right to file a formal complaint. Formal complaints must be filed with the FDIC Chairman or the ODEO Director. Within 120 days of the receipt of such a complaint for which it has jurisdiction, the FDIC shall notify the complainant of the results of the investigation in a letter containing—

(1) A finding regarding the alleged violations;

## Federal Deposit Insurance Corporation

## § 353.3

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(f) Appeals of the findings or remedies must be filed by the complainant within 30 days of receipt from the FDIC of the letter required by § 352.10 (e). The FDIC may extend this time for good cause.

(g) Timely appeals shall be accepted and processed by the FDIC Chairman or ODEO Director.

(h) The FDIC Chairman or ODEO Director shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the FDIC Chairman or ODEO Director determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make a determination on the appeal.

(i) The time limits set forth in (e) and (h) above may be extended for an individual case when the FDIC Chairman or ODEO Director determines that there is good cause, based on the particular circumstances of that case.

(j) The FDIC may delegate its authority for conducting complaint investigations to other federal agencies or independent contractors, except that the authority for making the final determination may not be delegated.

### § 352.11 Notice.

The FDIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the FDIC, and make such information available to them in such manner as the Chairman or designee finds necessary to apprise such persons of the protections against discrimination under section 504 or technology access provided under section 508 and this regulation.

## PART 353—SUSPICIOUS ACTIVITY REPORTS

Sec.

353.1 Purpose and scope.

353.2 Definitions.

353.3 Reports and records.

AUTHORITY: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318.

SOURCE: 61 FR 6099, Feb. 16, 1996, unless otherwise noted.

### § 353.1 Purpose and scope.

The purpose of this part is to ensure that an insured state nonmember bank files a Suspicious Activity Report when it detects a known or suspected criminal violation of federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. This part applies to all insured state nonmember banks as well as any insured, state-licensed branches of foreign banks.

### § 353.2 Definitions.

For the purposes of this part:

(a) *FinCEN* means the Financial Crimes Enforcement Network of the Department of the Treasury.

(b) *Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u) and 1818(b)(5)).

### § 353.3 Reports and records.

(a) *Suspicious activity reports required.* A bank shall file a suspicious activity report with the appropriate federal law enforcement agencies and the Department of the Treasury, in accordance with the form's instructions, by sending a completed suspicious activity report to FinCEN in the following circumstances:

(1) *Insider abuse involving any amount.* Whenever the bank detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the bank or involving a transaction or transactions conducted through the bank, where the bank believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the bank was used to facilitate a criminal transaction, and the bank has a substantial basis for identifying one of the bank's directors, officers, employees, agents, or other institution-affiliated parties as having committed or aided in the commission of the criminal violation, regardless of the amount involved in the violation;